

WILLKIE FARR & GALLAGHER LLP

1875 K Street, NW
Washington, DC 20006

Tel: 202 303 1000
Fax: 202 303 2000

November 19, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal Ownership Limits, MM Dkt. No. 92-264; Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage, MB Dkt. No. 07-42; Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Dkt. No. 05-255*

Dear Ms. Dortch:

On behalf of Comcast Corporation (“Comcast”), we respectfully respond to an ex parte letter filed by Media Access Project (“MAP”) on November 6, 2007 in the above-captioned dockets. In its submission, MAP raises groundless claims about Comcast’s compliance with the leased access rules in an attempt to justify horizontal and vertical cable ownership limits. MAP’s misleading and erroneous assertions provide no support for the imposition of further regulation and should be disregarded by the Commission.

First, MAP’s claim that Comcast has been uncooperative in responding to leased access requests is unsupported by -- and contrary to -- the record evidence in the leased access docket. Only two commenters, The America Channel (“TAC”) and CaribeVision, timely submitted evidence into the leased access docket regarding Comcast’s responsiveness to requests for leased access information. Both parties admitted that Comcast had timely complied with their requests for leased access information -- no small task considering that TAC sought leased access information for *every Comcast system in the country.*¹

¹ TAC reported that Comcast “generally replied” to TAC’s onerous request “within 15 days” as required by the Commission’s rules, and CaribeVision, a lessee of leased access time on Comcast systems, stated that “[w]hen programmers submit written bona fide requests that comply” with the rules, “cable operators generally timely comply” with

After the comment cycle in the leased access docket had closed and without seeking a waiver of the filing deadline, MAP submitted a study by Dr. Gregory Rose in which Dr. Rose claimed that Comcast did not timely respond to his requests for leased access information.² But Dr. Rose's own description of the process that he followed shows that he failed to comply with Commission rules for obtaining leased access information. While the rules state that cable system operators shall provide prospective leased access programmers with certain leased access information within 15 calendar days, they also plainly state that “[a]ll requests for leased access must be made in writing.” 47 C.F.R. 76.970(i)(4). Dr. Rose did not follow this explicit directive, instead calling cable systems and leaving voice messages.³ Accepting Dr. Rose's description at face value, it is clear that Comcast was under no obligation to supply Dr. Rose with leased access information under these circumstances.

Second, MAP raises false and misleading complaints about a memorandum Comcast's Philadelphia system sent to leased access programmers on October 17, 2007. In the memorandum, the Philadelphia system notified leased access users that their programming would be migrated to Digital Cable Channel 190 beginning on November 7, 2007.⁴ This change in channel and tier position is squarely within Comcast's rights under the leased access rules. The rules require that leased access programming be made available on a “tier that has a subscriber penetration of more than 50 percent,” 47 C.F.R. § 76.971(a)(1), a requirement fulfilled by Philadelphia's digital tier. And, contrary to MAP's claim, the memorandum explicitly told leased access users which channel their programming would be seen on, enabling them to immediately begin notifying viewers of the change.

Finally, none of MAP's complaints has anything to do with the only judicially validated justification for any horizontal cable ownership cap: a “real” and “non-conjectural risk” that cable operators will amass and abuse “market power” in a way that “unfairly impede[s] . . . the flow of video programming . . . to consumers.”⁵ There is no evidence in the leased access docket -- or any other docket -- that would support the imposition of any ownership cap given the highly competitive state of the marketplace today, including the cap MAP described in its November 6, 2007 ex parte letter.

their obligations. See The America Channel Comments in MB Dkt. No. 07-42 at 13, CaribeVision Comments in MB Dkt. No. 07-42 at 2. Notably, neither party provided *any* evidence of *any* systems that did not comply with their obligations.

² See Dr. Gregory Rose, *Commercial Cable Leased Access Fees: Are FCC Regulations Being Followed?* at 7 (bearing the date of Oct. 12, 2007. Dr. Rose's study was appended to MAP's Reply Comments in MB Dkt No. 07-42, which were dated Oct. 15, 2007, but received by the Commission on Oct. 16, 2007).

³ See *id.* at 7 (describing having calls transferred and “leaving messages”).

⁴ The Philadelphia system employee who prepared the notice possessed no information concerning treatment of leased access channels in any system other than Philadelphia and incorrectly stated that Comcast has mandated that all of its systems begin migrating leased access channels to their digital tiers; in fact, Comcast has not ordered its systems to take this action. In any event, this situation was not at all typical of Comcast's usual practices, in which at least 30-days' advance notice is commonly provided. Here, an employee miscalculated the dates and, when a single leased access programmer raised an objection, Comcast worked with that programmer to devise a mutually agreeable accommodation.

⁵ See *Time Warner Entm't Co., L.P. v. F.C.C.*, 240 F.3d 1126, 1134-1136 (D.C. Cir. 2001). See also 47 U.S.C. § 533(f)(2)(A) (directing the Commission to “ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer”).

Marlene H. Dortch

November 19, 2007

Page 3

Please do not hesitate to contact me with any questions about this submission.

Sincerely,

/s/ James L. Casserly

James L. Casserly

cc: Chairman Martin
Commissioner Copps
Commissioner Adelstein
Commissioner Tate
Commissioner McDowell
Michelle Carey
Rick Chessen
Rudy Brioché
Amy Blankenship
Cristina Chou Pauzé
Monica Desai
Gregory Crawford
Jonathan Levy